

MINUTES – BOARD OF ASSESSORS MEETING, 2/17/05

In attendance: **Board of Assessors:** Denis O'Regan, Chair; Walt Borders, Jane Frantz, Tom Frantz, Larry Walker, Laura Wallace.

Public: None.

Absent: **Board of Assessors:** Brooke Bovard.

Denis O'Regan called the meeting to order at 7:30 p.m.

Minutes: The first order of business was the issue of a new Board secretary. Following the January 10th Board meeting, Larry Walker stepped down as secretary stating that he felt his style of recording minutes was not what the Board wanted. Denis O'Regan then asked Jane Frantz to fill the position, and she agreed. Denis asked the full Board for comments, and the Board agreed to confirm Jane as the new secretary.

The next agenda item was how the Board should handle public participation at regular Board meetings and at public hearings. Denis emphasized that we will be holding three public hearings even though we are only required to hold two. Because non-public hearings are working meetings for the Board, and some of the items we'll be discussing could generate controversy, Denis would prefer that the public participate only if recognized by the Chair. Otherwise, members of the public will be asked to hold their comments until the end of the meeting. Individual Assessors can request feedback from the public in attendance, but speakers should still be recognized by the Chair. For public hearings, Denis felt that an hour is enough time for members of the public to express their opinions or to ask questions. We can always extend the length of the hearing if we need to do so. The Board felt that these rules, first adopted at our meeting on November 30, 2004, are reasonable, and they were reaffirmed by the entire Board. **NOTE: Our public hearings are scheduled for Monday, February 28th; Saturday, May 7th; and Wednesday, June 8th.** A postcard notice of our public hearing schedule will be mailed out in compliance with the Act to Reincorporate. Denis will contact Danny Schweers, Arden Town Secretary, to see how this has been handled in the past. Laura Wallace volunteered to help Jane with the mailing of the notices.

Larry addressed the issue of Board members communicating with each other by e-mail. His concern is that if we are deliberating matters of Board

business and making decisions in advance of our meetings, we could be violating Delaware's Sunshine Law. Larry felt that we can discuss procedural matters, but we must be careful not to make decisions. Walt Borders said that issues about what goes on the website and other administrative matters are fine. Denis's position was that among the Assessors there is a feeling of goodwill and a desire to educate ourselves. He felt that our e-mails are more statements of our personal opinions or positions rather than actual discussions. As long as we are not setting policy or making decisions in advance, he did not see a problem.

Tom Frantz suggested that the Board needs legal guidance on issues like this and that we should get legal advice. Larry recommended taking this issue to the Advisory Committee because other Arden committees face the same problem. Larry suggested asking the Trustees to get an opinion from their lawyer. Walt asked whether we should use the Trustees' lawyer or get our own. He mentioned the recent problem the Town had when a Trustee got the Town's lawyer, who is also the Trustees' lawyer, to reverse an opinion he had given to the town regarding last November's referendum. Denis agreed with the need to get a legal opinion but pointed out that we have exactly \$50 in our budget. Denis said that after what happened last year, the Board of Assessors should certainly have some money set aside to get legal advice. Both Walt and Denis agreed that the Board must decide who to go to for legal advice. Tom pointed out that the Budget Committee presents a 3-year budget at the March Town Meeting. He said we need to determine a figure to be available for next year's Assessors. Walt made the point that the Board needs an independent knowledge base; we should not just rely on the Trustees' lawyer. Larry said the amount of money we need to ask for will be a problem. Tom said that our budget should cover more than just legal advice. For example, he felt that outside expert advice on land assessment would be an appropriate budget item for the Board of Assessors. However, Tom agreed with Larry that an increase in the Board's budget could result in "shock and awe" when the budget is presented. Denis countered that it is important to get the idea of the Assessors actually having a realistic budget out there. He said we are facing the real issue of determining the proper level and method of taxation going into the 21st century. We need a budget that will help us to establish our legal position on various issues relating to taxation; we need to get out of the realm of anecdote and lean more toward fact-based, legally defensible opinions. Denis stated that acting in advance to head off legal problems with the actions we take is the responsible thing to do. He proposed the following "game plan": The Board (represented by

a 2-3 person fact-finding committee) will meet with a lawyer, present the questions/issues we'd like answered/addressed, get a quote for the legal advice and/or retainer, then the Board will decide how much to include in our budget recommendation. Denis and Jane agreed to be on the fact-finding committee, with Tom, Walt or Laura, in that order, as the third member depending on who is available for the meeting. The Board agreed to proceed with the "game plan" and to discuss where we stand at our next meeting. Some issues the Board identified for discussion with the lawyer are:

- Community vs. public property and how relevant taxes should be handled.
- Domiciles – how does the *Ardencroft v. Troyan* case affect Arden land rent assessment?
- Where does the Trust get the legal authority to collect taxes on private property?
- Must all Arden residents bear the tax burden for improvements on private property?
- What is our obligation to adhere to Georgist economic principles?
- Review of past legal cases in Arden – Are those decisions still good law (e.g., *Ross v. Freeman*, etc.)?

With regard to the public hearing, Tom suggested that the public should have their say, and Board members should respond to their questions. Denis thought an hour would be enough for the public discussion, with a regular Board meeting to follow. Laura asked if we should tell the public about our previous discussions. Tom thought that we should allow the public to bring their own issues forward. It was agreed by the Board that we will allow an hour for the public hearing unless there is a need to go longer. Tom and Larry both said that we will eventually need to discuss the rates and factors. Denis felt it would be better not to do that prior to our first public hearing. He didn't feel it was fair to spring decisions on the public before they've had a chance to have their say. The Board agreed.

Jane passed out copies of a court case called *Ardencroft v. Scott* and suggested that it be considered for inclusion in the Green Book. Denis said that the Green Book, along with the attorney information, should be on the agenda at our next meeting. He asked all Assessors to read the *Ardencroft v. Scott* case before the next meeting.

To recap, our action items before the next meeting are:

- Mail out postcards with the public hearing schedule. Denis to contact Danny Schweers about labels, etc.
- Denis to call Mark Taylor about getting his father, attorney Don Taylor of the law firm Cooch and Taylor, to talk to us or refer us to someone else.
- Put numbers together for a budget.
- Hold our first public hearing on Monday, February 28th from 7:30 to 8:30 p.m.

The meeting was adjourned at 9:25 p.m.

Respectfully submitted by,
Jane Frantz
Secretary, Board of Assessors